

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability.. See 86 Ill. Adm. Code 140.101. (This is a GIL).

July 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 31, 2000. Your letter had apparently been mislaid in the Department and has now been forwarded to our office for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I have a question about the taxability of a particular type of transaction, and I have been unable to find an answer on your website or in any of your tax guides.

We occasionally bill our customers for travel expenses incurred by members of our staff. These travel expenses arise when a customer requires our services for training or consulting work. We do not make a profit on the travel expenses - the charges are for a reimbursement of expenditures only, and are billed on a separate invoice.

Are charges of this type subject to Sales and Use Tax in your state? I would be grateful if you could provide an answer, preferably quoting the relevant state regulation. Please answer in writing, so the documentation can be added to our files.

Thank you very much for your assistance.

We cannot provide you with a specific answer in the context of a General Information Letter and based upon the limited information contained in your letter. However, we can provide you with some general guidelines that may assist you in determining whether such charges are subject to Illinois Retailers' Occupation Tax or Use Tax liability.

Sales of Tangible Personal Property

July 17, 2000

Retailers' Occupation Tax liability is measured by the seller's gross receipts from the sale of tangible personal property. In computing a retailer's Retailers' Occupation Tax liability, no deduction is allowed for a retailer's costs of doing business, such as acquisition, handling, marketing, advertising, or other expenses. See the enclosed copy of 86 Ill. Adm. Code 130.410. All of these costs are part of the component price of the product and are subject to tax, whether they are separately stated on the bill or not. We cannot tell from your letter whether the travel expenses referenced in your letter would be considered part of any product (tangible personal property) sold by your company.

Some types of charges, if separately stated on an invoice which is initialed by customers, are considered separately contracted for and not part of the selling price. See the enclosed copy of 86 Ill. Adm. Code 130.450. To be excludable, these charges must be separately stated and agreed to separate and apart from the selling price of the items being sold. If such separate agreements cannot be documented, such charges would be part of the selling price subject to tax.

Sales of Service

Illinois Retailers' Occupation and Use Taxes only apply to sales of tangible personal property. If your customers are only contracting for training services or consulting work and your company is not selling any tangible personal property, then these services would not be subject to Illinois Retailers' Occupation and Use Tax liability.

However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. For example, training books or other written materials may be transferred to customers as part of their training. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act. In training or consulting service situations, most providers usually qualify and choose the last tax base described in the prior sentence. These service providers would pay Use Tax to their Illinois suppliers when they purchase materials to be transferred to their

July 17, 2000

service customers. If they purchased these materials from out-of-State vendors who are not registered to collect Illinois tax, they are required to remit Use Tax on the cost price of those items directly to the State (Illinois Department of Revenue).

Please note that any tangible personal property used in this State will also be subject to Use Tax liability. See the enclosed copy of 86 Ill. Adm. Code 150.101. We have also enclosed a copy of 86 Ill. Adm. Code 150.310 which describes a number of exemptions to avoid multi-state taxation.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.